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Chairman
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1675 South State Street, Suite E
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**RE: Applicability of the Manufactured Home Owners and Community Owners
Act to The Villages of Noble's Pond Modular Home Community**

Dear Chairman Lemire:

I am writing pursuant to your request for an Attorney General's Opinion concerning the applicability of the Manufactured Home Owners and Community Owners Act (25 *Del. C.* § 7001 *et. seq.*, hereinafter referred to as "Chapter 70") to an age-restricted modular home community known as The Villages of Noble's Pond, located north of Dover in Kent County, Delaware (hereinafter, the "Community"). Based on the plain terms of Chapter 70, as well as the explicit statutory directive that the statute be "liberally construed and applied to promote its underlying purposes and policies,"¹ it is our opinion that Chapter 70 does apply to the Community.

Overview of Chapter 70 and Underlying Policies

Chapter 70 was adopted, in part, to "clarify and establish the law governing the rental of lots for manufactured homes as well the rights and obligations of manufactured home community owners (landlords), manufactured home owners (tenants) and residents of manufactured home communities[.]"² The current version of Chapter 70 was enacted in 2003 to revise, update and increase the scope of the previous version, passed in 1986 as the Mobile

¹ 25 *Del. C.* § 7001.

² 25 *Del. C.* § 7001(a)(1). This purpose is also reflected in the synopsis accompanying the bill enacting Chapter 70. See H.B. 2, 142nd Gen. Assem., 1st Sess. (Del. 2003) ("[Chapter 70] governs the rental of lots upon which manufactured homes are placed by their owners in manufactured home communities and specifies the rights and duties of community owners and home owners."). The synopsis of a bill is "a proper source from which to glean legislative intent." *Carper v. New Castle County Bd. of Ed.*, 432 A.2d 1202, 1205 (Del. 1981).

Home Lots and Leases Act.³ According to the synopsis of the bill enacting Chapter 70, the legislation was “crafted from the consensus of representatives from the Delaware Manufactured Home Owners Association, the First State Manufactured Housing Association (community owners), and other interested parties who met numerous times over many months to discuss, debate, and ultimately agree upon the provisions of the new Act.”⁴

The scope of Chapter 70 is set forth in Section 7001(b), which states that the statute “applies to all rental agreements for manufactured home lots and regulates and determines the legal rights, remedies and obligations of all parties to a rental agreement, wherever executed, for a lot for a manufactured home in a manufactured home community within this State.”⁵ Specifically, Chapter 70 sets forth certain provisions that may and may not be included in the rental agreements for manufactured home lots,⁶ provides for a default term for home lot rental agreements,⁷ outlines the rights and obligations of the parties to the rental agreement in the event of termination for either change in land use or noncompliance with the terms of the lease,⁸ and creates a scheme for relocating home owners in the event of a change or conversion of land use.⁹

As provided by Section 7001(b), the requirements of Chapter 70 apply only to rental agreements for manufactured homes placed on leased lots. To provide clarity as to the types of homes covered by the statute, Chapter 70 includes a definition of “manufactured home” that is drawn largely from the previous statute, with some notable differences discussed further below. Under Chapter 70, manufactured home is defined as:

[A] factory-built, single-family dwelling:

- (a) Transportable in 1 or more sections, which is either 8 body feet or more in width and 40 body feet or more in length, or, when erected on site, has more than 400 square feet in living area; and
- (b) With or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and
- (c) If manufactured since June 15, 1976, built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes. “Manufactured home” is synonymous with “mobile home”, “trailer”, and similar terms used elsewhere in this title.¹⁰

³ See H.B. 2, 142nd Gen. Assem., 1st Sess. (Del. 2003).

⁴ *Id.*

⁵ 25 Del. C. § 7001(b); see also *Williams v. Bay City, Inc.*, 2009 WL 5852851, at *2 (Del. Super. Dec. 23, 2009) (restating purpose and application of Chapter 70).

⁶ See 25 Del. C. § 7006.

⁷ See 25 Del. C. § 7007.

⁸ See 25 Del. C. § 7010-10A.

⁹ See 25 Del. C. § 7011-13.

¹⁰ See 25 Del. C. § 7003(11).

There is no dispute that if the homes in the Community satisfy the Chapter 70 definition of “manufactured” housing, then Noble’s Pond is the type of land/lease community that would be covered by Chapter 70. Accordingly, this opinion focuses on the language of the statutory definition of “manufactured home” and the details of the homes located in the Community to determine whether Chapter 70 applies.

Noble’s Pond Homes Satisfy the Chapter 70 Definition of “Manufactured Homes”

The homes in the Community are characterized by counsel for Noble’s Pond (hereinafter, the “Lessor”) as “modular” housing,¹¹ which is largely constructed in a factory and then transported to the development site in multiple segments for assembly.¹² The home sites in the Community are owned by the Lessor, and leased to the individual home owners.¹³ All of the various housing alternatives offered by Noble’s Pond are single-family dwellings that range from 1,560 to 3,180 square feet in living area, and all are designed to be year-round residences.¹⁴

Based solely on the foregoing characteristics, the homes in the Community plainly satisfy all but subparagraph (c) of the Chapter 70 definition of “manufactured home.”¹⁵ Accordingly, the question of whether or not these homes are “manufactured homes” for the purposes of Chapter 70 depends on whether they are built according to the manufactured home standards promulgated by HUD, or, alternatively, in accordance with “other applicable codes.”¹⁶

The homes in the Community are not “manufactured homes” as the term is defined in HUD regulations. The HUD definition of “manufactured home” is set forth, in relevant part, as follows:

a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, *and which is built on a permanent chassis* and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.¹⁷

Because the modular homes in the Community, like most modular housing, are not built on a permanent chassis,¹⁸ they do not qualify under the HUD definition of “manufactured homes.”

¹¹ See Letter from Michael P. Morton, counsel for the Lessor, to Susan Sisco of the Delaware Manufactured Home Relocation Authority, at 1 (June 21, 2010) (hereinafter, the “Morton Letter”).

¹² *Id.*; see also *Needham v. Savini Corp.*, 2004 WL 550853, at *1-2 (Del. Ch. Mar. 18, 2004) (describing construction and assembly process for modular housing). For a description of the construction process for Noble’s Pond homes, see http://www.noblespondhomes.com/pdf/Noble's_Pond_Tear_Offs.pdf.

¹³ See Morton Letter at 1.

¹⁴ See <http://www.noblespondhomes.com/homes/>.

¹⁵ Indeed, the Lessor’s counsel appears agree that the homes in Noble’s Pond meet the requirements of subparagraphs (a) and (b), and argues only that the homes do not qualify based on subparagraph (c). See Morton Letter at 2-3.

¹⁶ See 25 Del. C. § 7003(11).

¹⁷ 24 C.F.R. § 3280.2 (2008) (emphasis added).

¹⁸ See Morton Letter at 1, 2.

As such, they are not built to comply with the Manufactured Home Construction and Safety Standards promulgated by HUD, and therefore do not satisfy that piece of subparagraph (c).

Under the Chapter 70 definition, however, a structure that satisfies the other criteria of Section 7003(11) may also qualify as a “manufactured home” if it is built in accordance with “other applicable codes.” In our view, this phrase is broad enough to encompass *any* other building code that could apply to the types of housing described in Section 7003(11). This would include the modular homes located in the Community, which are built to conform to the National Building Code developed by the Building Officials Code Administrators International (“BOCA”).¹⁹ The BOCA code is a model code that provides detailed standards for all aspects of building construction, which plainly satisfies the “other applicable code” requirement. Because the modular homes in the Community also satisfy the remaining elements of the Chapter 70 definition of “manufactured home,” our view is that the Community is covered by Chapter 70.

Notwithstanding the plain language of the statute, we understand that counsel for the Lessor contends that a purportedly common or industry-accepted definition of “manufactured home” would restrict Chapter 70’s application to homes (typically mobile homes or trailers) that are titled as a vehicle, are constructed on a metal frame or chassis and are built to comply with HUD standards.²⁰ We do not view counsel’s position as consistent with the plain language of the Chapter 70 definition, and where a statute is unambiguous, its plain meaning controls and precludes further interpretation.²¹ Nevertheless, even assuming that the Chapter 70 definition is ambiguous, and therefore is subject to interpretation to determine the intent of the General Assembly,²² we believe the Lessor’s position to be inconsistent with that intent for several reasons.

First, the inclusion of Noble’s Pond within the application of Chapter 70 is consistent with the broad language reflected in both the statute itself and its legislative history. Chapter 70 explicitly states that its language is to be “liberally construed and applied to promote its underlying purposes and policies[.]”²³ Those purposes and policies are set forth in the statute, and suggest the intent of the General Assembly to clarify the law surrounding the often problematic relationship between the owners of manufactured home communities and the manufactured home owners who lease lots within the communities.²⁴ This intent is equally clear from the legislative history, in which the General Assembly chose to highlight the greater scope of Chapter 70 compared to the predecessor statute, as well as the “extensive ‘truth-in-leasing’” section of the new statute.²⁵

¹⁹ See *id.* at 1.

²⁰ See *id.* at 1-2.

²¹ See, e.g., *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932-33 (Del. 2007).

²² See *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999) (“The goal of statutory construction is to determine and give effect to legislative intent.”).

²³ 25 Del. C. § 7001(a).

²⁴ See 25 Del. C. § 7001(a)(1).

²⁵ See H.B. 2, 142nd Gen. Assem., 1st Sess. (Del. 2003). Similarly, in her signing message former Governor Ruth Ann Minner stated that the bill “will bring stability and peace of mind to thousands of manufactured home owners throughout our state.” Delaware Governor’s Message, May 27, 2003.

The difficulties inherent in this type of land/lease relationship (*i.e.* placing a permanent or quasi-permanent structure on leased land)²⁶ are not limited to mobile home communities. They are equally relevant to modular home communities like Noble's Pond.²⁷ To exclude Noble's Pond would be to ignore the obvious similarities between the risks faced by the Community's residents and the Lessor and those faced by traditional mobile home communities, simply based on (often subtle) structural and design differences without regard to the purposes for which Chapter 70 was enacted. In our view, such an interpretation would frustrate the intent of the General Assembly. Accordingly, even if it is determined that the Chapter 70 definition is ambiguous, that ambiguity should be resolved to bring land/lease arrangements like that of Noble's Pond within the application of the statute.

Second, a comparison between the definition of "mobile home" in the Mobile Home Lots and Leases Act that preceded the current Chapter 70 and the current statutory definition of "manufactured home" confirms the intent of the General Assembly to broaden the application of Chapter 70.²⁸ The definition of "mobile home" from the predecessor statute is as follows:

A manufactured home, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 or more square feet. *It is built on a permanent chassis*, designed to be used as a year round dwelling with or without a permanent foundation when connected to the required utilities, and if manufactured since June 15, 1976, has been built in accordance with the National Manufactured Home Construction and Safety Standards.²⁹

Notably, the previous definition is nearly identical to the current Chapter 70 definition, except the previous definition included the same "permanent chassis" reference that is present in the HUD regulations. In the Chapter 70 update, this reference is omitted, and such an omission must be presumed to be purposeful.³⁰ Indeed, the care with which the language of Chapter 70 --

²⁶ The Delaware State Housing Authority describes the risks inherent in manufactured home land/lease arrangements this way:

[O]wning a large, fairly immobile asset on land over which the owner has no control, possibly only a fairly short-term (year or a few years) lease, and no guaranteed predictability of future rent costs is fundamentally insecure. Considering that asset is also often a household's largest asset, and that asset is also a household's home, creates even more insecurity. While the majority of manufactured housing communities are certainly operated well, reasonably, and with consideration for homeowners, *the vulnerability is inherent in the form of tenure itself.*

See Delaware State Housing Authority, *Manufactured Housing in Delaware: A Summary of Information and Issues*, at 20 (Dec. 2008), available at <http://www.destatehousing.com/information/pubs.shtml> (emphasis added).

²⁷ See Morton Letter at 1-2; see also <http://www.noblespondhomes.com/about/faq.asp> (describing the community as a "land/lease" community in which the home site is rented from the Lessor).

²⁸ See 2A NORMAN J. SINGER, *SUTHERLAND STATUTORY CONSTRUCTION* § 47.7 at 311 (7th ed. 2007) ("In cases of doubt, prior definitions may be helpful in determining legislative intent.").

²⁹ 65 Del. Laws, ch. 446, § 7003(2) (1986) (emphasis added).

³⁰ See *Fid. & Deposit Co. of Md. v. Dep't of Admin. Services*, 830 A.2d 1224, 1228-29 (Del. Ch. 2003) (declining to insert language into statute where the legislature was "clearly capable of articulating" the

and in particular the definition section -- was drafted is evident from the legislative history.³¹ Thus, since the presence of a permanent chassis appears to be an identifying feature of contemporary mobile homes,³² the fact that the General Assembly chose to omit that reference should be interpreted as consistent with its stated intent of extending the applicability of Chapter 70.³³

Another notable difference between the definitions of "mobile home" in the predecessor statute and "manufactured home" in Chapter 70 is the insertion of the "other applicable codes" language. Since HUD regulation has displaced all non-identical building codes as the only standard governing the construction of mobile homes and trailers,³⁴ the addition of this language suggests that it is intended to cover other types of factory-built housing. Once again, this interpretation is consistent with the notion that the General Assembly intended to expand the application of Chapter 70.

Third, in our view the suggestion that the Chapter 70 definition should be read in light of some customary or industry-accepted definition is misplaced. Where the General Assembly chooses to define a term for the purposes of a particular statute, that definition conclusively establishes the term's meaning when used in the statute, even if the definition departs from the term's customary meaning.³⁵ Moreover, we are not aware of a single, consistently-accepted distinction between the terms "manufactured home" and "modular home." To the contrary, there appears to be some confusion within the marketplace over that precise issue.³⁶ For example, a

requested language and "could easily have done so" if it had so intended); *Metrodev Newark, LLC v. Justice of the Peace Court No. 13*, 2010 WL 939800, at *8 (Del. Super. Feb. 18, 2010) (noting the impropriety of "assum[ing] it was a Legislative oversight to omit" certain terms from a statute where the legislature "clearly could have added" such terms, "but chose not to" do so). Moreover, since the definition set forth in Chapter 70 is comprised of a list of requirements, there is a rational and justifiable inference that terms not included in the list were purposely excluded. See 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.23 at 417-18 (7th ed. 2007).

³¹ H.B. 2, 142nd Gen. Assem., 1st Sess. (Del. 2003) (explaining that the bill enacting Chapter 70 included an "expanded definition section" in which "[a]ttention was given to the accuracy of each definition to prevent ambiguity and avoid 'legalese'").

³² See, e.g., *Ass'n for Regulatory Reform v. Pierce*, 849 F.2d 649, 650 (D.C. Cir. 1988). See also Morton Letter at 1 ("Unlike a double wide home that is constructed on a metal frame and is installed on a metal frame, [the Noble's Pond modular housing] is installed on a crawl space with no metal frame.").

³³ It should be noted that the Chapter 70 definition of "manufactured home" also states that the term is "synonymous with 'mobile home', 'trailer', and similar terms used elsewhere in this title." We view this statement as simply a suggestion, and not an all-inclusive list of all types of homes that fit within the definition.

³⁴ See 42 U.S.C.A. § 5403(d) ("[N]o State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard."); see also *Scurlock v. City of Lynn Haven, Fla.*, 858 F.2d 1521, 1524 (11th Cir. 1988) ("The language of the statute clearly precludes states and municipalities from imposing construction and safety standards upon mobile homes that differ in any respect from those developed by HUD.") (emphasis omitted).

³⁵ See *Stiftel v. Malarkey*, 384 A.2d 9, 11 (Del. 1977).

³⁶ See, e.g., *Hice v. Lott*, 223 P.3d 139, 146-47 (Colo. App. 2009) (describing uncertainty in attempting to determine the distinctions between "mobile," "manufactured" and "modular" homes); *Burton v. City of*

recent development in the factory-built housing market is the so-called "on-frame" modular home, which involves a home built on the type of permanent metal frame used for HUD-compliant manufactured homes, but built to standards set in state or local building codes. If Chapter 70 is construed narrowly, turning on technical definitions of housing standards rather than on the presence or absence of the land/lease arrangements that the statute is intended to regulate, this continual evolution of the factory-built housing industry will provide endless opportunities for circumvention of the General Assembly's broadly-stated intent.

Conclusion


Based on the foregoing, it is our opinion that The Villages at Noble's Pond community is subject to the requirements of the Manufactured Home Owners and Community Owners Act.

Sincerely,



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Approved:


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cc: Katrina Barbour, Opinion Coordinator